| | BEFORE THE STATE OF WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL |
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| | IN RE APPLICATION NO. 99-1 CONSTANCE HOAG'S RESPONSE TO MOTION TO STAY COUNCIL ORDER GENERATION FACILITY No. 754 |
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| | I. Introduction |
| | The Applicant, Sumas Energy 2, Inc. (SE2) has filed a motion to stay the effectiveness of |
| (| Council Order No. 754 and to postpone transmitting its recommendation regarding the Sumas |
| Į | Energy 2 Generation Facility to the Governor pending filing and resolution of motions for |
| r | reconsideration. |
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| | II. Standard for Action |
| | The Council's adjudicatory proceedings are governed by the Energy Facility Siting |
| 5 | Statute, RCW chapter 80.50, the Council's regulations, WAC Title 463, and the Washington |
| ŀ | Administrative Procedure Act, RCW chapter 34.05. Section 34.05.470 of the Admistrative |
| I | Procedure Act and Sections 463-30-335 of this Council's regulations authorize any party to file a |
| N | Motion for Reconsideration within 10 days after the Council issues a Final Order. |
| | Counsel for the Applicant argues that Section 34.05.467 also authorizes this Council to |
| S | tay the effectiveness of a Final Order pending the resolution of a Motion for Reconsideration. |
| ŀ | However, section 34.05.470 (2) states that "No petition for reconsideration may stay the |
| e | effectiveness of an order." It could be argued that a petition for reconsideration, therefore may |
| n | not stay the effectiveness of an order. Although the permissive "may" is used, it is in the |
| I. | negative, permission is denied. Applicant is requesting a stay while filing a motion for |

reconsideration, yet this section could be interpreted as denying a stay in the case of a motion f r reconsideration.

Applicant argues that based on some prior projects the Council has first issued Initial Orders, prior to issuing a Final Order. However, the Applicant provides no statutory requirement to do so, and because numerous past applications were approvals of the said projects with conditions, an action in such a case would not be applicable to this instance where the Council sissuing a recommendation for denial. Also, a past practice may have been incorrect, and applicant does not make the case that it was on all prior orders. Once again, there is no legal basis for requiring the Council to issue an Initial Order. Section 34.05.470, which the applican cites regarding petition for reconsideration also refers only to a final order.

The applicant implies that they wish to change their application at this late date. This i precluded by law.

The Applicant argues that a stay would not prejudice any party to these proceedings (p 2 at 39,41). I do not agree. The Application from the SE2 has caused a great deal of expenditure on the part of parties who, without compensation, have been forced to respond to the Application. SE2 argued throughout the proceedings that any delay would prejudice them, but argues now that delay will not prejudice other parties. I have gone to great personal expense to participate in these proceedings. I and other parties submitted timely information for the Council's consideration. A wealth of information has been reviewed by the Council, and a decision rendered that is well-considered and appropriate, based on the record supplied by the Applican and the Intervenors. It appears now that the Applicant wishes to change its application or the record. This is not an appropriate legal remedy. Justice would warrant that we be able to go or with our lives and businesses, rather than face further delays and expense at the hand of the Applicant.

| 1 | Applicant footnotes that SE2 attempted to make the motion to stay orally at the |
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| 2 | Council's February 16, 2001 meeting in Bellingham. I note that Section 34.05.467 states that if |
| 3 | party wishes to "submit a petition" for stay, it may do so, "within 10 days of its" [the final |
| 4 | order's] "service unless otherwise provided by statute or stated in the final order." There is no |
| 5 | provision for oral motion. Once again, the applicant provides no legal basis for the Council to |
| 6 | accept an oral argument at the time of a decision on a final order. It is more equitable to allow |
| 7 | parties adequate time to respond to a motion, as the Council has done in this case. |
| 8 | III. Conclusion |
| 9 | Applicant's arguments for a stay are without merit, will cause prejudice to myself and |
| 10 | other parties, and should be denied. |
| 11 | |
| 12 | DATED: February 26, 2001 |
| 13 | At Olympia, Washington |
| 14 | Tonstance Hold |
| 15 | Constance Hoag |
| 16 | 2633 Halverstick Rd |
| 17 | Lynden, WA 98264 |
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| 19 | |
| 20 | |